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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ORACLE AMERICA, INC.,)
 Plaintiff,)
 vs.) No. CV 10-03561 WHA
GOOGLE, INC.,) VOLUME I
 Defendant.)

)

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Videotaped Patent Issues Deposition
of JOHN C. MITCHELL, Ph.D., taken at
755 Page Mill Road, Palo Alto, California,
commencing at 9:43 a.m., Tuesday,
September 6, 2011, before Leslie Rockwood,
RPR, CSR No. 3462.

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<p style="text-align: right;">Page 78</p> <p>1 A. I believe it's important to have adequate and 2 attractive networking connections. Something that's not 3 state-of-the-art would probably impede -- stands to 4 reason something that's not state-of-the-art may impede 5 sales. 11:35:25 6 As an additional factor, I just would point 7 out that as far as I understand -- and it should be easy 8 to find more information about it -- there are various 9 manufacturers of wireless networking hardware, and one 10 may be substitutable for another. 11:35:47 11 Q. So having a 3G air interface or above is also 12 the basis for consumer demand for Android products? 13 A. I think I've explained the importance of that 14 factor. 15 Q. Is it more or less important in the patents 11:36:04 16 patents-in-suit, sir? 17 A. Well, one factor that comes to mind -- and 18 there may be others -- that would occur to me on 19 reflection is that there is -- I believe a -- some degree 20 of substitutability across available networking hardware, 11:36:23 21 whereas as I've laid out in this report, based on my 22 study and evaluation to the best that I'm able to do 23 this, it doesn't appear that there is reasonable 24 substitutability of another platform for the platform 25 that draws critically on the patents-in-suit. 11:36:50</p>	<p style="text-align: right;">Page 80</p> <p>1 11:59 a.m. 2 You may proceed. 3 Q. BY MR. PAIGE: Welcome back, Professor 4 Mitchell. 5 A. Thank you. 11:59:22 6 Q. You say that the Oracle employees Landau, 7 Poore and Vandette conducted certain experiments at your 8 direction; correct? 9 A. I believe that's what it says in that report. 10 Q. Why did you choose to use Oracle employees 11:59:37 11 rather than an independent consulting firm? 12 A. I believe that I asked if it was possible to 13 get someone to help with some kinds of experiments like 14 that or perhaps someone asked me if I knew students, and 15 I suggested that perhaps someone who works for Oracle 11:59:56 16 could be one possibility of doing that. 17 Q. Are there no consulting firms capable of 18 doing the type of work that those employees did? 19 A. There may be. I didn't -- I didn't research 20 that. 12:00:16 21 Q. Did you think it might be better to have 22 someone independent rather than a partisan with a stake 23 in the matter doing these experiments? 24 MR. PETERS: Objection. Form. 25 THE WITNESS: I didn't really even make that 12:00:28</p>
<p style="text-align: right;">Page 79</p> <p>1 Q. So in your opinion, the patents-in-suit are 2 more important than having a 3G air interface on an 3 Android device? 4 A. That's not what I said. 5 Q. Well, what is your opinion? Are the 11:37:06 6 patents-in-suit more important or is having a 3G air 7 interface more important? 8 MR. PETERS: Objection. Form. 9 THE WITNESS: I believe that the -- and it 10 would be possible to look into this if this is an 11:37:21 11 absolutely critical issue, and maybe other people know 12 more about it, but it strikes me that there are likely a 13 number of different ways to assemble a phone with 14 adequate networking so that an individual chip to provide 15 networking could be replaced with another, whereas as I 11:37:48 16 think I tried to explain, I don't see that as being an 17 aspect of the patents-in-suit in the software technology 18 at issue. 19 MR. PAIGE: Okay. We need to take a break to 20 change the tape, please. 11:38:05 21 THE VIDEOGRAPHER: This is the end of Disk 22 Number 1, Volume 1. We are off the record at 11:38 a.m. 23 (Recess.) 24 THE VIDEOGRAPHER: This is the beginning of 25 Disk Number 2, Volume 1. We are back on the record at 11:59:13</p>	<p style="text-align: right;">Page 81</p> <p>1 judgment. It didn't strike me that this would be an 2 issue where partisanship or opinion would have much 3 bearing on it. What I believe those engineers have done 4 is modify the system in various ways that's easily 5 documented and run the system with certain measurements 12:00:49 6 afterwards. I think the results there are probably 7 concrete and can be evaluated objectively. 8 Q. BY MR. PAIGE: Did you design the experiments 9 conducted by Landau, Poore and Vandette? 10 A. I believe I did to a certain degree. That 12:01:10 11 is, the experiments are to the -- as far as I recall, 12 basically comparisons against the Android system or 13 components of it as it exists now versus some 14 modification. As far as I recall, those modifications 15 were modifications that I suggested. 12:01:36 16 Q. Okay. So you're the one who came up with the 17 actual modifications they implemented; is that right? 18 A. At some degree of detail, I believe so. 19 Q. Okay. You might not have done the actual low 20 level code, but you told them on a high level, "This is 12:01:52 21 what I'd like you to do in order to carry out this 22 experiment"? 23 A. I don't remember the exact, you know, wording 24 of the discussion, but I believe I handled it the same 25 way I would with a graduate student. I want them to feel 12:02:09</p>

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<p style="text-align: right;">Page 82</p> <p>1 invested and convinced that they're doing something 2 that's correct. And I'm happy to listen to someone 3 else's opinion if they think there's a better way to do 4 something, but I believe that the actual experiments that 5 were carried out reflected my suggestions and requests on 12:02:28 6 how to do it. 7 Q. Was counsel for Oracle involved at all in 8 designing the experiments? 9 A. I don't believe so. 10 Q. Were they generally on the phone with you 12:02:36 11 when you would talk with these employees on the phone? 12 A. As far as I recall, and there may be some 13 instance that I've forgotten about, I believe all of 14 the phone calls were from this office in an office -- 15 from a room in this office building with a speakerphone 12:02:57 16 in the middle of the table. On many of those calls 17 Peter Kessler from Oracle was present, and there may have 18 been someone from the law firm as well. 19 Q. Okay. And when you say this office building, 20 you mean Morrison & Foerster's office building here in 12:03:18 21 Palo Alto? 22 A. That's correct. The place we sit today, yep. 23 Q. Okay. And Peter Kessler is not a lawyer; 24 correct? 25 A. That's correct. Peter Kessler is an Oracle 12:03:27</p>	<p style="text-align: right;">Page 84</p> <p>1 modifications made to it and, thereby, estimate the 2 difference that the allegedly infringing functionality 3 made; right? 4 A. I believe that's a correct characterization. 5 Could I look at the report just to remind 12:04:57 6 myself what's in it and how he carried out his 7 experiments? 8 (Exhibit Google 420 was marked for 9 identification.) 10 THE WITNESS: I can read this further, but in 12:06:22 11 the interest of time, if you'd like to proceed. 12 Q. BY MR. PAIGE: I would like to proceed. 13 For the '702 patent he had three different 14 ways he estimated the effect of not using the allegedly 15 infringing functionality; right? 12:06:33 16 A. That's the way I remember it, and it's also 17 identified that way on page 304 of his report. He lists 18 methodology experiment one, experiment two, experiment 19 three. 20 Q. Okay. And the first methodology involved 12:06:54 21 modifying the DX tool in order to prevent it from 22 carrying out the allegedly infringing functionality of 23 moving duplicates; right? 24 A. Yes. That's what the report says in 25 paragraph 15. 12:07:06</p>
<p style="text-align: right;">Page 83</p> <p>1 engineer. 2 Q. Okay. What lawyers did participate in those 3 phone calls, to your recollection? 4 A. I don't know if participation is the right 5 characterization. There may have been lawyers present 12:03:39 6 just to set up the call or make the phone number -- make 7 the connection. 8 Q. Okay. So they didn't actually speak on any 9 of these calls that you had; is that right? 10 A. Well, I think they made an introduction. I 12:03:59 11 think that they -- I don't -- I didn't unilaterally 12 arrange or locate these employees. I don't know how they 13 were selected, so I was introduced to them by someone in 14 the firm. But from that point forward, the technical 15 discussion was under my control and direction. 12:04:19 16 Q. Okay. I'd like to focus in on the report by 17 Noel Poore. He did experiments on your behalf that 18 relate to the '520 and '702 patents; correct? 19 A. I believe that's correct. 20 Q. Okay. And his methodology -- 12:04:33 21 A. Uh-huh. 22 Q. -- was to take the DX tool that's found on 23 the Android website -- 24 A. Uh-huh. 25 Q. -- then run the DX tool with certain 12:04:40</p>	<p style="text-align: right;">Page 85</p> <p>1 Q. Okay. And for the '520 patent, he had one 2 way of disabling the alleged play execution of static 3 arrays; right? 4 A. I can check to make sure if you'd like, but 5 that's also my recollection. 12:07:18 6 Q. Okay. So that way Mr. Poore could compare 7 what the size of the code looked like when the DX tool 8 allegedly play executed and what the size of the code 9 looked like when the DX tool did not use play execution; 10 right? 12:07:34 11 A. I believe that's the basic idea. 12 Q. Okay. And if you could turn to page 15 of 13 his report, the code following paragraph 65, that's what 14 Mr. Poore found when it was allegedly play executed; 15 correct? 12:07:56 16 A. I don't recall the exact context for this 17 paragraph. If you just give me a second, I'll look at 18 the page or so before just to remind myself what this is 19 saying. 20 Okay. I think I'm with you. I think that 12:09:22 21 what he means by normal execution is the unmodified DX 22 tool and its output. 23 Q. Okay. What you would consider the infringing 24 DX tool; correct? 25 A. That's correct. 12:09:35</p>

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<p style="text-align: right;">Page 266</p> <p>1 I declare under the penalty of perjury 2 under the laws of the State of California that the 3 foregoing is true and correct. 4 Executed on _____, 2011, 5 at _____, _____. 6 7 8 9 10 _____ 11 SIGNATURE OF THE WITNESS 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 268</p> <p>1 INDEX 2 3 TUESDAY, SEPTEMBER 6, 2011 4 5 WITNESS EXAMINATION 6 7 JOHN C. MITCHELL, PH.D. Patent Issues Volume 1 8 9 By Mr. Paige 5 10 By Mr. Weingaertner 180 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 267</p> <p>1 STATE OF CALIFORNIA) ss: 2 COUNTY OF MARIN) 3 4 I, LESLIE ROCKWOOD, CSR No. 3462, do hereby 5 certify: 6 That the foregoing deposition testimony was 7 taken before me at the time and place therein set forth 8 and at which time the witness was administered the oath; 9 That testimony of the witness and all 10 objections made by counsel at the time of the examination 11 were recorded stenographically by me, and were thereafter 12 transcribed under my direction and supervision, and that 13 the foregoing pages contain a full, true and accurate 14 record of all proceedings and testimony to the best of my 15 skill and ability. 16 I further certify that I am neither counsel 17 for any party to said action, nor am I related to any 18 party to said action, nor am I in any way interested in 19 the outcome thereof. 20 IN WITNESS WHEREOF, I have subscribed my name 21 this 7th day of September, 2011. 22 23 24 25 _____ LESLIE ROCKWOOD, RPR, CSR NO. 3462</p>	<p style="text-align: right;">Page 269</p> <p>1 DEPOSITION EXHIBITS 2 JOHN C. MITCHELL, PH.D., VOLUME 1 3 NUMBER DESCRIPTION IDENTIFIED 4 Exhibit Google 418 U.S. Patent Number 31 5 6,061,520, 5/9/00 6 Exhibit Google 419 Opening Expert Report 42 7 of John C. Mitchell 8 Regarding Patent 9 Infringement, 8/8/11 10 Exhibit Google 420 Summary and Report of 84 11 Noel Poore, 8/6/11 12 Exhibit Google 421 Appendix A 87 13 Exhibit Google 422 Expert Report of Terence 128 14 Parr, Ph.D., Regarding the 15 Non-Infringement of U.S. 16 Patent No. 6.061,520, 17 8/25/11 18 Exhibit Google 423 Expert Report of Terence 134 19 Parr, Ph.D., Regarding 20 the Non-Infringement of 21 U.S. Patent No. 6,061,520 22 Exhibit Google 424 Reply Expert Report 138 23 of John C. Mitchell 24 Regarding Patent 25 Infringement, 9/1/11</p>

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